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9 UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,

Case No. 2:22-CR-00049-RMP-1

12 Plaintiff,

13 v.

14 EMMALENA ANN MICHEL,

PLAINTIFF'S SENTENCING
MEMORANDUM

15 Defendant.

16 United States of America, by and through Vanessa R. Waldref, United States
17 Attorney for the Eastern District of Washington, Alison L. Gregoire, Assistant
18 United States Attorney, submits the following sentencing memorandum:

19 **I.**

20 **STATEMENT OF FACTS**

21 On October 23, 2021, officers with the Colville Tribal Police Department
22 responded to a traffic collision wherein two minors had been struck by a drunk
23 driver in a Tundra truck. The first victim was a 13-year-old female, JK, and the
24 second victim was a 15-year-old male, DP. JK was transported by helicopter to
25 Sacred Heart Medical Center where her considerable injuries were treated. DP was
26 pronounced deceased at the scene. The driver of the Tundra truck struck another
27 vehicle after hitting DP and JK, spinning the second vehicle 180 degrees. The
28 driver of the Tundra then exited the truck and fled on foot.

1 The Tundra was registered to Defendant, Emmalena Ann Michel.
2 Additionally multiple witnesses on scene identified Defendant as the driver. A 10-
3 year old witness, JK's sister, saw Defendant exit the Tundra and say, "I'm sorry,"
4 before running from the scene. The 10-year old noted Defendant smelled of
5 alcohol, and the 10-year old's mother (also JK's mother), who was also present,
6 noted Defendant appeared to be intoxicated at the time. Additionally, another
7 witness, Vernon Lawrence, stated he had fallen back from the Tundra because the
8 driver seemed to be drunk and was driving down the middle turn lane.

9 Washington State Patrol prepared a collision synopsis indicating the Tundra
10 was traveling at a rate of speed between 46.96 and 51.25 miles per hour (in a 25
11 mile per hour zone), when the Tundra struck the children. The Tundra was
12 searched and found to have alcohol containers inside.

13 Later that same evening, Defendant turned herself into law enforcement.
14 She provided a breath sample at that time that registered .081 percent blood
15 alcohol content; her blood was also found to be positive for Carboxy-THC. She
16 made spontaneous statements including, "I need help, I need counseling;" and
17 "I'm so sorry, I'm so sorry."

18 II.

19 SENTENCING CALCULATIONS

20 The government agrees with United States Probation that Defendant's total
21 offense level is 21, criminal history category is I, and guideline range is 37-46
22 months. The government has previously filed a motion for upward
23 departure/variance. ECF No. 50. The government is seeking 60 months on Count
24 1 and 48 months on Count 2, to run concurrent for a total sentence to 60 months of
25 imprisonment.

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1 **III.**

2 **GOVERNMENT’S OBJECTION TO PSIR**

3 The government has no objections to the PSIR.

4 **IV.**

5 **RESPONSE TO DEFENDANT’S OBJECTIONS TO PSIR**

6 Defendant has filed no objections to the PSIR as of the date of this
7 memorandum.

8 **V.**

9 **SENTENCING FACTORS UNDER 18 U.S.C. §3553(a)**

10 In determining the appropriate sentence, this Court should consider the
11 factors as set forth in 18 U.S.C. § 3553(a).

- 12 1. The nature and circumstances of the offense and the history and
13 characteristics of Defendant.

14 The circumstances of the offense involve Defendant’s driving a truck, at a
15 speed nearly double the posted speed limit, on a residential street, when she had
16 been drinking. Tragically, the circumstances of the offense involve Defendant
17 striking and killing a teenage boy and seriously injuring a teenage girl. She knew
18 both children. As the young boy lay dying in the street, Defendant fled the scene
19 of the accident on foot.

- 20 2. The need for the sentence imposed to reflect the seriousness of the
21 offense, promote respect for the law, and to provide just punishment.

22 The government asks that the Court sentence Defendant to imprisonment for
23 60 months or 5 years. The government also asks for three years of supervised
24 release. The government believes 60 months of imprisonment is required to reflect
25 the seriousness of the offense, promote respect for the law, or provide just
26 punishment.

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1 The government anticipates the victims will speak directly to the Court at
2 sentencing and will not recite their anticipated statements¹ here, but suffice to say
3 the damage that has been done is extreme, it is painful, and it is forever.

4 DP's mom, Amanda, notes in the PSIR that the death of her first child has
5 impacted her younger child (who now struggles mentally and in school), her father
6 (who is having trouble just surviving the loss) and her ability to work (at a medical
7 facility where she has trouble responding to people in a similar condition to her son
8 when paramedics arrived). ECF No. 48 at ¶ 32. She notes of her first born "He
9 was a great kid. Everyone loved him." *Id.* at ¶ 33. This sweet boy, who did not
10 like confrontation, loved his culture, hunting and fishing. *Id.* at ¶ 33-34. She notes
11 the young boy "had plans" and had "so much to live for." *Id.* at ¶ 36. He had
12 "college ahead of him." *Id.* at 41.

13 DP's mother notes she does not sleep, she has constant fear and anxiety, she
14 fears losing her daughter, and she no longer trusts people like she did before. ECF
15 No. 58 at 47. She states losing her son "is beyond anything I have ever endured.
16 The pain has not subsided, and it never will." *Id.* She details several ways her pain
17 will go on saying, "even in death I worry about my son and if he is okay wherever
18 he is." *Id.*

19 DP's mother provides a long list of nevers—things often taken for granted
20 that DP will never have a chance to do. She describes how Defendant robbed DP
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22 ¹ The government noted earlier (ECF No. 50) that the victims would have
23 photographs as well as an audio announcement played at DP's school announcing
24 his death, as part of their victim impact statements. The audio recording has been
25 previously provided, with the victim impact statements, to U.S. Probation (it was
26 forwarded to defense counsel immediately upon receipt). The photographs,
27 because they portray the victims were minors, are appended hereto under seal. *See*
28 Appendix.

1 of many firsts he should have been able to share with his family. His mother notes
2 DP will never graduate high school or college, never get married and have a family
3 of his own, never get meet his little sister with whom DP's mother is pregnant as of
4 this writing. ECF No. 58 at 49.

5 She recounts the day Defendant hit her son, DP. While Defendant fled on
6 foot, Amanda, who was out of town at a conference had her friend hold a phone up
7 to her son's ear so she could tell him she was with him. Amanda describes hearing
8 her own mother crying, hearing the medics' machines flatlining, while knowing
9 she was losing him. ECF No. 58 at 50.

10 Regardless of the sentence given to Defendant, Amanda notes she, as DP's
11 mother, has a life sentence, "The pain I've felt since that day is a pain no parent
12 should EVER have to endure, and I'm going to live with it for the rest of my life."
13 ECF No. 58 at 50 (emphasis in original).

14 DP's aunt notes she has trouble going to her sister's house; she states, "I feel
15 like I am waiting for him." ECF No. 48 at ¶ 42. She reflects fondly on her nephew
16 who was killed a month before he was to turn sixteen noting, "He was the kind of
17 kid that never let you down, always brought you up. He was spunky. He had his
18 future plans and he kept achieving things." *Id.* at ¶ 44.

19 The victim of Count 2, to which Defendant also pled guilty, has also been
20 forever impacted by this accident, as has her family. ECF No. 48 at ¶ 48. She has
21 been secluded and isolated and goes in and out of counseling. *Id.* Her father knows
22 she was fortunate just to survive, but "part of her died that day." *Id.* JK, the victim
23 of Count 2, had isolated orthopedic injuries which required her admission to the
24 hospital and a facial laceration. *Id.* at 64. That, however, fails to adequately
25 explain the extent of the damage done to this very young girl.

26 When speaking to the losses she's suffered, JK herself does not cite to her
27 considerable injuries first; instead she starts with the loss of DP noting, "This
28 incident took the life of my first love and very best friend." ECF No. 58 at 53.

1 She states when she awoke in the hospital, she asked where DP was and only then
2 learned he was gone. *Id.*

3 JK did, in fact, suffer considerable injuries; she was hospitalized for over a
4 week and required extensive surgeries. ECF No. 58 at 53. She notes needing
5 assistance walking, to shower, go to the bathroom, and even get out of bed. *Id.* She
6 has a steel rod in her right femur bone and a metal plate in her right forearm and
7 states “I feel like I am never going to be physically normal.” *Id.* She requires
8 further surgery to remove the rod from her leg because of the extreme pain it is
9 causing. *Id.* These would be traumatic injuries for an adult, but as JK reminds the
10 reader, she just entered ninth grade this year. *Id.*

11 JK’s mother, Kim, speaks first to DP and watching her daughter grow up
12 right along with DP. ECF No. 58 at 55. She explains how DP came to be at the
13 scene of the accident, indicating he wanted to go to Inchelium with Kim and JK for
14 the last weekend of hunting season while his mother, Amanda, was in Seattle for
15 work training. *Id.* Kim notes, “People say things happen for a reason, but I wish
16 he went to Seattle with his mom rather than with me.” *Id.*

17 Kim details the impact to her own daughter, and notes as a result of the
18 accident she struggles to be a mother to her three children who have needed her
19 more now than ever before. ECF No. 58 at 55. She notes, “My other daughter,
20 also with me on the second ATV, witnessed the same incident with her own eyes,
21 and she too needed me the most, and I had nothing for her.” *Id.*

22 Kim details in the immediate aftermath of the accident, when Defendant
23 looked at her and said, “I am sorry, Kim.” ECF No. 58 at 56. She told Defendant to
24 get help, but she went to “try and hide,” without getting help, leaving the kids to
25 die. *Id.*

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1 3. The need for the sentence imposed to afford adequate deterrence to
2 criminal conduct.

3 The government asserts imprisonment for 60 months is sufficient to deter
4 criminal misconduct, provided it is accompanied by a three-year term of
5 supervised release.

6 In terms of specific deterrence, Defendant is 35 years old, she is a mother of
7 a teenager herself. ECF No. 48 at 2, ¶ 133. She has appreciable amounts of
8 criminal history that commenced, in terms of serious offenses, when she was just
9 20 and committed two counts of battery. *Id.* at ¶ 91. Much of Defendant’s
10 criminal history involved assaults and/or driving while intoxicated as detailed more
11 thoroughly in the government’s motion for upward departure/variance. ECF No.
12 50. Having been convicted of DUI multiple times, having been through treatment
13 multiple times, Defendant chose to drink and drive again and, in this instance,
14 ultimately caused a loss, which can never be mitigated—can never be undone, and
15 forever changed lives. ECF No. 48 at ¶¶ 85, 97, 146.

16 In terms of general deterrence, it is noted by the victims themselves that all
17 of the people involved in this case came from the same community, and that
18 community is watching to see what the Court will do in this case. ECF No. 48 at
19 ¶¶ 40, 44. DP’s aunt noted, when talking about the reservation and this incident,
20 “Everyone gets a slap on the hand up here.” *Id.* at ¶ 43. DP’s mother indicates she
21 hopes the Court will “make an example of this so our reservation can get the help it
22 deserves and this does not happen to another family.” *Id.* at ¶ 40. She asks “the
23 Court to make our community a little bit safer by keeping [Defendant] behind bars
24 as long as possible.” ECF No. 58 at 51.

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1 4. The need for the sentence imposed to protect the public from further
2 crimes of Defendant.

3 The government believes a jail term of 60 months total is necessary. The
4 government also believes three years of supervised release during which Defendant
5 will be accountable directly to the Court is essential. The government believes
6 such punishment is sufficient to protect the public.

7 As noted in the government's motion for upward variance/departure (ECF
8 No. 50), Defendant maintains several offenses that involve drinking or assaults or
9 both. In December of 2009, Defendant got a DUI in King County. ECF No. 48 at ¶
10 81. She also has tribal convictions from 2008 for, among other offenses, Driving
11 While Intoxicated and Reckless Driving. ECF No. 48 at ¶ 97. In that instance,
12 again there was a car wreck, again Defendant was the driver, and again she was
13 intoxicated with a breath test resulting in a reading of .192 percent blood alcohol
14 content. ECF No. 48 at ¶ 98. In the instant case, Defendant provided a breath
15 sample, at 11:30 p.m., approximately ten hours after the accident, that registered
16 .081 percent blood alcohol content, again choosing to drive while heavily
17 intoxicated.

18 As an adult, Defendant pled guilty to a number of tribal assault and battery
19 offenses to include two counts of battery from February 10, 2008, an additional
20 assault and battery committed on March 16, 2008, and an additional two counts of
21 battery committed on June 6, 2008. ECF No. 48 at ¶ 91.

22 Defendant's convictions have not deterred Defendant's ongoing and
23 escalating criminal conduct. Defendant, an acknowledged alcoholic who continues
24 to drive drunk and who has otherwise assaulted several people *does* pose a danger
25 to the public. The public does need protection from this Defendant. The fact of
26 conviction has proven an ineffective deterrent, and a significant sentence is
27 necessary to protect the public from further harm.
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- 1 5. The need for the sentence imposed to provide Defendant with needed
 2 educational or vocational training, medical care, or other correctional
 3 treatment in the most effective manner.

4 Defendant has not identified any needed educational or vocational training.
 5 Defendant has identified an issue with alcoholism² and the government endorses
 6 her requests for any continued treatment while confined and after any jail term has
 7 been completed. ECF No. 58 at ¶¶ 143, 146.

- 8 6. The kinds of sentences available.

9 Defendant is subject to a sentence involving a term of imprisonment. The
 10 government is recommending 60 months of confinement followed by three years
 11 of supervised release.

12 The government also notes restitution is required by statute. *See* 18 U.S.C. §
 13 3663A. The government seeks \$4,706.42 for burial costs for DP. The government
 14 also seeks restitution for the value of the ATV DP and JK were on when Defendant
 15 hit them, in the amount of \$4,080.

- 16 7. The need to avoid unwarranted sentence disparity among defendants with
 17 similar records who have been found guilty of similar conduct.

18 The government's proposed sentence requires an upward variance from the
 19 guideline range. Such an upward variance will not generate an unwarranted
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21 ² Defendant went to treatment (both inpatient and outpatient) in 2017. ECF No. 58
 22 at ¶146. Defendant attributed her relapse due to being “peer pressured into
 23 drinking by Antonio Perez.” *Id.* at ¶ 148. Of note, the police reports requested by
 24 Defendant and ordered by this Court note Mr. Perez and Defendant had a no
 25 contact order in place in May of 2016 and were engaged in custody disputes and
 26 accusing each other of being a negligent parent thereafter. It is, therefore, difficult
 27 to understand how Mr. Perez was in a position to “peer pressure” Defendant into
 28 drinking, thereby causing her relapse.

1 sentencing disparity. Most crimes of this type are handled in state court; this one is
2 in federal court because of the location where it occurred and the enrollment status
3 of the parties involved. Were Defendant in state court on this record, her guideline
4 range would have been 95 to 125 months of imprisonment.³ The government's
5 recommended sentence will not generate a disparity with relation to similarly
6 situated defendants.

7 **VI.**

8 **GOVERNMENT'S SENTENCING RECOMMENDATION**

9 The government recommends the court impose a sentence to 5 years of
10 imprisonment as well as a three year term of supervised release.

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12 Respectfully submitted this 24 day of February, 2023.

13 Vanessa R. Waldref
14 United States Attorney

15 s/Alison L. Gregoire
16 Alison L. Gregoire
17 Assistant United States Attorney
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25 ³ Whether Defendant was convicted pursuant to RCW 46.61.520(1)(a) or (b), the
26 guideline would be the same, the offender score only raised by 2 based on the
27 second count for the serious bodily injury inflicted on JK. See RCW
28 9.94A.525(11).

CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following:
Lorinda Youngcourt, Kathryn Lucido, Federal Defenders.

s/Alison L. Gregoire

Alison L. Gregoire

Assistant United States Attorney